Filed 6/8/15 In re J.S. CA1/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re J.S., a Person Coming Under the Juvenile Court Law.	
LAKE COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. J.S., Defendant and Appellant.	A143013 (Lake County Super. Ct. No. JV320394)

This is an appeal from the jurisdictional findings and dispositional order in a dependency matter involving minor, J.S. (minor). Minor's father, also J.S. (father), contends the juvenile court's jurisdictional findings lack the support of substantial evidence. Father further contends that timely notice of his right to voluntarily relinquish minor to a designated individual was not given, and that one of the requirements of his case plan is illegal and must be vacated. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 4, 2014, the Lake County Department of Social Services (the department) filed a juvenile dependency petition pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (g), alleging, among other things, that minor, age four, had suffered or was at substantial risk of suffering serious physical harm or illness due to his parents' failure or inability to adequately supervise or protect minor; willful or

negligent failure to provide him with adequate food, clothing, shelter or medical treatment; and inability to provide him with regular care due to their substance abuse (hereinafter, petition).[1] In addition, the petition alleged that minor had been left with a caregiver who was not able to meet his basic dental, medical, developmental and mental health needs, and that father's whereabouts were unknown. The petition also alleged that K.S., minor's mother (mother), has a significant history of both criminal behavior and substance abuse resulting in her failure to provide proper, regular care for minor. Father, in turn, was also alleged to have an extensive criminal history that included convictions for DUI and drug-related offenses, and to currently be on supervised probation. Finally, the petition alleged that minor had observed his adult caregivers use intravenous drugs and smoke marijuana, and that he himself had allegedly smoked marijuana with an extended family member.

On March 4, 2014, the juvenile court found, among other things, that a prima facie case had been established with respect to the allegations in the section 300 petition, and that no reasonable means were available to protect minor's health and safety without removing him from parents' physical custody.

In anticipation of the jurisdictional hearing, the department prepared a report setting forth relevant facts with respect to the allegations in the section 300 petition (hereinafter, the jurisdictional report). The jurisdictional report advised, among other things, that, on or about January 31, 2014, father left minor in the care of P.W., who was not minor's legal caregiver and who had taken minor with her to Marin County.[2] After a

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[1] Unless otherwise stated, all statutory citations herein are to the Welfare and Institutions Code.

[2] P.W. had known father since 2000, and had lived with him for most of the period from 2003 until January 25, 2014. Despite a significant age difference (P.W. is nearly 30 years older than father), the pair were romantically involved. In 2004, however, father became romantically involved with mother, then 18 years-old, during a weekend of drug use that resulted in mother's pregnancy with minor. The couple were together nearly one year. After minor was born, minor lived primarily with mother until she went to jail in March 2013, at which time minor went to live with father and P.W., who had rekindled

few weeks in Marin County, P.W. met with an emergency response social worker on or about February 27, 2014, and told the social worker, among other things, that she was homeless, that minor had severe emotional, mental health and dental needs due to the neglect and abuse he suffered under mother's care, that father had recently relapsed into drug abuse, and that neither parent had the present ability to meet minor's needs. P.W. further told the social worker in Marin County that minor was in great need of services, which she hoped would be more readily available in Marin County than in Lake County. She acknowledged, however, having neither legal guardianship rights nor educational rights with respect to minor. Based upon this meeting, the Marin County social worker concluded that, because P.W. was not minor's legal guardian, she was unable to meet the serious needs that she acknowledged minor had, or to protect minor in the event that either parent returned to regain physical custody of him.

The jurisdictional report further advised that P.W. had subsequently told Lake County social worker De La Torre that father was supportive of her seeking a legal guardianship of minor, explaining that father was in a new relationship and had told her that he did not want see P.W. or minor again. Mother, in turn, told De La Torre that she did not support P.W.'s decision to relocate to Marin County with minor, although she acknowledged P.W. had appropriately cared for minor while mother was dealing with her own criminal matters. Mother had been minor's primary caregiver until he was three years-old, at which time she had been incarcerated. She now hoped to reunify with minor.

According to the jurisdictional report, father initially refused during a phone conversation to provide De La Torre with a mailing address, insisting that he had been staying in hotels in the Lodi area and did not have one. A warrant had issued for father's arrest on February 7, 2014, due to his failure to comply with court orders made during sentencing on a DUI conviction. In addition, father was arrested at a February 5, 2014

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their relationship. During this time, P.W. primarily cared for minor while father went to work.

Napa County traffic stop for driving in excess of 100 miles-per-hour and being found in possession of a pound of marijuana and concentrated cannabis.

Father had explained to De La Torre that, while P.W. had permission to take minor to Marin County, she was merely minor's "babysitter" and he intended to regain physical custody of minor. Minor, in turn, told De La Torre that he had seen his maternal grandmother hold a lighter under a spoon with "drugs" in it and then use a "doctor's needle" to put the drugs into her arm. In addition, minor stated that he had seen his father smoke marijuana in front of him and sell marijuana cookies to people "who like pot in their throats." He had also "smoked joints" with his "uncle Mikie" (mother's brother). In addition, in March 2014, minor told mother during one or more of their visits that he had seen her and "Uncle Mikie" stealing and that father had told him she puts drugs up her nose and that drugs could "go up my nose, too."

At the April 16, 2014 jurisdictional hearing, the juvenile court heard testimony from mother, P.W., and De La Torre. Significant here, P.W. denied that she had been homeless with minor in Marin, insisting they had always had a roof over their heads. P.W. was on a waiting list for low-income housing. P.W. also had sufficient funds to pay their living expenses from, among other sources, the substantial monthly alimony payment she received from her ex-husband. P.W. also disputed the claim that she had no means to obtain services for minor, insisting father had given her minor's medical card and birth certificate, as well as written authorization to obtain medical and other services for minor. She acknowledged minor had significant dental needs stemming from the period during which he had been under mother's care. In June 2013, a dentist advised that minor needed two extractions, four crowns and two spacers, none of which had been done by the time of minor's detention in February 2014. She intended to seek a legal guardianship over minor, and had no criminal or CWS history that would prevent this. She also denied father had relapsed into drug use, and claimed she had never seen him use any drug other than marijuana, which he had been prescribed for the pain he suffered following a serious motorcycle accident. P.W. explained that many of the statements she purportedly told the Marin County social worker were inaccurate.

Mother, in turn, testified that she wanted minor with father, and that she did not think he should have been removed from father's care. Mother also stated that she believed P.W. had been a good mother to minor, and that father was a good dad who had been there for him since birth. Mother's attorney thereafter argued that minor should be placed with father and P.W.

The juvenile court, before ruling, stated with respect to the discrepancies in P.W.'s statements to social workers and in testimony, that "the greater probability of truth lies in what she stated to [the social workers]." The court then sustained the section (b) allegations (b-1 through b-5) entirely, and sustained one of two section (g) allegations (g-2).

In the subsequent dispositional report, the department stated, among other things, that father had relapsed into drug use; mother, who had recently been jailed, had indicated a willingness to enter a residential treatment program; and both parents had declined to sign the requisite consent forms to receive services. In addition, father had agreed to attend a parenting class but refused to stop using marijuana. Father explained that he had become disabled following a 2007 motorcycle accident, and had initially been prescribed Oxycodone for pain. However, he believed medicinal marijuana was a healthier, less addictive way to handle his pain.

The report further advised that minor had visited the emergency room after pushing two rocks into his ear, and would need extensive dental work requiring anesthesia. Minor's foster parent reported that he had been biting and punching himself, pulling his hair, urinating on toys and furniture, destroying toys and furniture, had called himself a "stupid bitch," and had threatened to stab himself with a knife.[3] Minor had been referred for Intensive Therapeutic Foster Care and a behavioral health assessment, but neither had been implemented. P.W. had applied for placement, but had not been

[3] An addendum report dated August 4, 2014, included additional incidents of minor's aggressive, destructive and often violent behaviors in the foster home. At least one of minor's foster homes gave 7-day notice seeking his removal due to concerns that he was a safety risk to other children in the homes.

approved, and her visitation with minor had been suspended after the social worker reported that she had told minor inappropriate things, such as that she had found a house for them.

The department ultimately concluded neither parent was capable of meeting minor's needs and, thus, recommended continued out-of-home placement and reunification services for parents.

On July 7, 2014, the juvenile court granted P.W. de facto parent status. However, the department, which had opposed P.W.'s de facto parent request, declined to approve her application for placement after concluding that she had "self-disclosed her homelessness and inability to meet [minor's] needs" and that she had a history of "personal instability" and questionable judgment and moral character. For example, although P.W. had described mother as a "violent drug addict," P.W. had acknowledged that she and father had allowed minor to spend unsupervised weekends with mother, including one weekend after which mother failed to return minor for five weeks. In addition, P.W. reportedly used three or four Hydrocodone pills every six to eight hours for back pain, and had repeatedly made inconsistent statements during the course of these proceedings.[4]

Following the contested dispositional hearing on August 18, 2014, the juvenile court found by clear and convincing evidence that minor's placement with either parent would be detrimental to his safety, protection or physical or mental well-being. The juvenile court thus ordered minor to be placed in foster care (not with P.W.), and ordered reunification services for mother and father. The court then set the matter for a six-month status review hearing on February 2, 2015. On September 8, 2014, father filed a timely notice of appeal.

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[4] In an addendum report, the department stated that P.W. had reported, among other things, that father had used heroin, methamphetamine, marijuana and alcohol. In addition, P.W. described father as a drug addict and dealer, who had a violent temper and other anger issues, could not be left alone with minor, and had driven intoxicated with minor in the car.

DISCUSSION

Father raises the following primary issues for review. First, father contends that the juvenile court's jurisdictional findings, as to both him and mother, are not supported by substantial evidence. Second, he contends the department failed to discharge its statutory duty to provide notice to parents regarding their rights to voluntarily relinquish minor to a designated individual or individuals. Third, he contends the requirements of his case plan that he refrain from illegal drugs and show the ability to live free of drug dependency must be vacated in light of the license he holds to use marijuana for medicinal purposes. We address each of these issues in turn below.

I. Substantial Evidence Supporting the Court's Jurisdictional Findings.

Father contends there was insufficient evidence to support the jurisdictional findings that minor came within the provisions of section 300, subdivisions (b) and (g). Section 300, subdivision (b), authorizes a minor to be adjudged a dependent of the juvenile court where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardians mental illness, developmental disability, or substance abuse." Section 300, subdivision (g), in turn, applies, as relevant here, where "[t]he child has been left without any provision for support; . . . the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful." (§ 300, subd. (g).)

"At a jurisdictional hearing, the juvenile court ' "shall first consider . . . whether the minor is a person described by Section 300, and for this purpose, any matter or information relevant and material to the circumstances or acts which are alleged to bring him or her within the jurisdiction of the juvenile court is admissible and may be received in evidence. However, proof by a preponderance of evidence, legally admissible in the

trial of civil cases must be adduced to support a finding that the minor is a person described by Section 300." ' [Citation.] [¶] 'While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.' [Citation.] Thus previous acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur." (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564-565.)

On appeal, where, as here, a parent contends there is insufficient evidence to support a jurisdictional finding, "we review the evidence most favorably to the court's order — drawing every reasonable inference and resolving all conflicts in favor of the prevailing party — to determine if it is supported by substantial evidence. [Citation.] If it is, we affirm the order even if other evidence supports a contrary conclusion." (*In re N.M.* (2011) 197 Cal.App.4th 159, 168.) Further, "the child welfare agency must prove by a preponderance of the evidence that the child who is the subject of the petition comes under the court's jurisdiction. (§ 355; *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248 [19 Cal.Rptr.2d 698, 851 P.2d 1307]; [citation].) On appeal, the parent has the burden of showing there is insufficient evidence to support the order." (*In re N.M., supra,* 197 Cal.App.4th at p. 168.)

Here, the record contains sufficient evidence to sustain the dependency petition under section 300, subdivisions (b) and (g). The first relevant section (b) allegation, b-1, states that, on or about January 31, 2014, father left minor in the care of P.W., who was not minor's legal caregiver and, thus, could not provide him with necessary dental, medical, developmental and/or mental health services. In support of this allegation are the following facts set forth in the social worker's report: (1) According to Marin County CWS records, P.W. met with an emergency response social worker on or about February 27, 2014, and told her, inter alia, that, (a) she was homeless; (b) minor had severe emotional, mental health and dental needs due to the neglect and abuse he suffered under mother's care; (c) father had recently relapsed into drug abuse; and (d) neither parent had the present ability to meet minor's needs. (2) The Marin County social worker

concluded based upon this meeting that, because P.W. was not minor's legal guardian, she was unable to meet the severe needs that she acknowledged minor had, or to protect minor in the event either parent returned minor to their care. (3) While P.W. subsequently told Lake County social worker De La Torre that father was supportive of her seeking legal guardianship of minor (because he was in a new relationship and did not want see P.W. or minor again), mother told De La Torre that she did not support P.W.'s decision to relocate to Marin County with minor. (4) De La Torre then talked to father, who advised that, while he had permitted P.W. to take minor to Marin County, P.W. was simply babysitting minor until he could regain physical custody of him.

The b-2 allegation, in turn, states that father has a criminal history that includes, inter alia, the issuance of an arrest warrant on February 7, 2014, for failing to comply with court orders made during sentencing on a DUI conviction and his arrest at a February 5, 2014 Napa County traffic stop for driving in excess of 100 miles-per-hour without a license and being found in possession of a pound of marijuana and about 36 grams of concentrated cannabis or hashish. This allegation was established with copies of relevant police and court records.

According to the b-5 allegation, minor has observed his adult caregivers use intravenous drugs and marijuana, and has been given marijuana to smoke by an adult caregiver. Supporting this allegation are statements minor himself made to De La Torre, as described in the social worker's report, that, among other things, he had seen his maternal grandmother hold a lighter under a spoon with "drugs" in it and then use a "doctor's needle" to put the drugs into her arm, that his father smoked marijuana in front of him and sold marijuana cookies to people "who like pot in their throats," and that he had "smoked joints" with his "uncle Mikie" (mother's brother).

Father contends this showing fails to constitute substantial evidence in support of the court's findings under section 300, subdivision (b), that, at the time of the jurisdictional hearing, minor was facing a substantial risk of suffering serious illness or harm due to father's failure or inability to provide appropriate care or supervision. We disagree.

To begin with, father's history of substance abuse and criminal activity was recent, ongoing, and well-documented. Specifically, the record reflects that, just one month before the detention hearing in this case, father was arrested for driving without a license in excess of 100 miles-per-hour while in possession of pound of marijuana and 36 grams of concentrated cannabis. This evidence, particularly when considered in light of P.W.'s contemporaneous statement to the Marin County social worker that father had relapsed into substance abuse and minor's statement to social worker De La Torre that father sells marijuana cookies, demonstrates, without more, that minor faced a substantial risk of suffering serious physical harm or illness due to father's inability or failure to adequately supervise or protect minor at the time of the jurisdictional hearing. (§ 300, subd. (b).) As the California case law makes clear, "[a] parent's ' "[p]ast conduct may be probative of current conditions' " where, as here, ' "there is reason to believe that the conduct will continue." ' [Citation.] [¶] In addition, the Legislature has declared, 'The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.' " (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

With respect to the other evidence in the record of minor's exposure to illicit drugs, father claims the fact that minor told the department that he had seen his maternal grandmother use intravenous drugs, had seen his maternal uncle smoke marijuana, had seen father smoke pot and sell marijuana cookies to others, and had himself smoked marijuana with his maternal uncle is, essentially, irrelevant. Father reasons that, one, there is no evidence father or P.W. were present or aware of the incidents involving the grandmother and uncle and, two, he cannot be penalized for using "medical marijuana" because he has a valid license to do so. Nonsense. Evidence of this ongoing pattern of minor's exposure to drug use by his caregivers (and, to be clear, selling "marijuana cookies" to others is not authorized use of medical marijuana) is indeed relevant to whether minor faces a substantial risk of serious harm due to father's inability or unwillingness to provide adequate parental care, or to adequately supervise or protect minor when he is left in the care of others. (§ 300, subdivision (b).)

Moreover, while father insists there is no evidence that minor has actually suffered an illness or injury as a result of his alleged parental shortcomings, we disagree. First, a four-year-old child is indeed harmed when his caregiver gives him marijuana to smoke. And even if he were not harmed, whether a child has actually suffered physical or emotional harm as of the jurisdictional hearing is not the dispositive issue. As the California Supreme Court explains, "section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a 'substantial risk' that the child will be abused or neglected. The legislatively declared purpose of these provisions 'is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm*.' (§ 300.2, italics added.) 'The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' [Citation]" (*In re I.J.* (2013) 56 Cal.4th 766, 773; see also *In re N.M., supra,* 197 Cal.App.4th at pp. 165-166.) The fact that father fails to see the potential for significant harm to minor arising from his conduct is, quite simply, alarming, and reinforces the appropriateness of the juvenile court's exercise of jurisdiction in this case. (Cf. *In re Brison C.* (2000) 81 Cal.App.4th 1373, 1376 [evidence failed to support finding that minor was at substantial risk of suffering serious emotional damage where, at the time of the jurisdictional hearing, "parents had recognized the inappropriateness of their behavior and made good faith efforts to alleviate the problem"].) As such, we decline to disturb the juvenile court's findings sustaining the allegations against father pursuant to section 300, subdivision (b).

Turning now to the sustained allegation under section 300, subdivision (g) – to wit, the allegation that father left minor with a caregiver unable to meet his basic health and development needs – we again find substantial evidence to support it. As the record reflects, P.W., the referenced caregiver, *acknowledged* significant barriers to her ability to adequately care for minor, a child she herself described as having "severe emotional,

mental health and dental needs due to the neglect and abuse he suffered while in his mother's care." Without rehashing all the relevant evidence on this issue, P.W. reported to a Marin County social worker that she was homeless, that father was absent and had left minor in her care while himself relapsing into substance abuse, and that neither parent could provide adequate care given their substance abuse and other problems. Further, while P.W. stated her desire to become minor's legal guardian, father, in turn, described her to the department as merely minor's "babysitter" and stated his own intent was to regain custody of minor. In addition, mother told the department she did not support P.W.'s decision to take minor with her to Marin County. Thus, the department could quite reasonably conclude in the jurisdictional report that P.W. lacked the capacity to adequately care for minor and to protect him from parents' potentially harmful involvement in his life. Simply put, P.W. could do little, if anything, to prevent parents from regaining physical custody over minor despite the serious risks their behavior posed to his already-fragile physical and mental health without court intervention.[5] Thus, while

[5] We acknowledge father, when giving P.W. physical custody of minor, also gave her written authorization to act as his caregiver, as well as possession of minor's medical card and birth certificate. However, as our appellate colleagues explained in *In re Athena P.* (2002) 103 Cal.App.4th 617, although "[the mother] *tried* to make the grandparents [the minor's] temporary legal guardians, [she nonetheless] failed. . . . The grandparents got custody as a matter of fact, but not as a matter of law. As a result, they had no authority to consent to medical treatment for [the minor]. Legally, they could not so much as authorize her necessary childhood vaccinations. They had no authority to enroll her in day care or in school. If she wandered away or got lost, they could not prove that they were entitled to have her returned to them. These were all aspects of the 'care' of a preschool child. The juvenile court could properly conclude that [the mother] had been unable and remained unable to arrange for [the minor's] care. [¶] . . . [¶] In sum, because [the mother] left [the minor] with the grandparents but failed to give them legal custody, the juvenile court could reasonably find that she was unable to arrange care. Thus, the juvenile court's finding that it had jurisdiction under subdivision (g) was supported by substantial evidence." (*Id.* at pp. 629-630.) This logic likewise applies here. Notwithstanding P.W.'s possession of written authorization to care for minor and minor's medical and birth documents, the fact remains that she did not have custody of minor as a matter of law, which, as the court found, was a significant hindrance to her ability to properly care for him, particularly given minor's severe mental, physical and developmental needs.

we do not doubt P.W.'s sincere desire to provide adequate care for minor, the fact remains she lacked the ability to do so.[6] Accordingly, we conclude the juvenile court's assertion of jurisdiction over minor pursuant to section 300, subdivision (g), was properly supported by the record, particularly when viewed in a light most favorable to the juvenile court. (*In re Anne P*. (1988) 199 Cal.App.3d 183, 199.)

Seeking to avoid this evidence, father relies upon *In re Isayah C*. (2004) 118 Cal.App.4th 684 to claim an unassailable right to leave minor in P.W.'s custody, which right, he claims, cannot be second-guessed by the department or the court. We, however, find *In re Isayah C*. inapposite. There, the reviewing court held that a parent who has *not been found unfit* to care for his child "generally enjoys the right to make reasonable decisions about where and with whom the child will reside." (*Id*. at p. 697.) There, unlike here, "no allegations under section 300 were ever established as to [the father]." (*Id*. at p. 695.) While the father was incarcerated at the time of detention, he was nonetheless a "non-offending" custodial parent under California law. (*Id*. at p. 691-692.) Thus, there was no legal basis for removing the child from the father's custody and rejecting out of hand the father's request that the child be placed during his incarceration with his niece and nephew in Redding. As the reviewing court explained, the applicable statute, given the father's status as a non-offending custodial parent, was section 361, subdivision (c), which bars the court from removing the child absent clear and convincing evidence that the non-offending custodial parent was either not able to protect the child from future harm, or could not arrange for the child's care while the parent was incarcerated. Thus, because the lower court failed to make the requisite findings under section 361, subdivision (c), the dispositional order was reversed and the matter remanded for further proceedings. (*Id*. at p. 696 [noting " '[t]here is no 'Go to jail, lose your child' rule in California. [Citation.]' "].)

Clearly, the circumstances of our case differ from those in *In re Isayah C.*, given that, here, the juvenile court *sustained* jurisdictional findings as to father. As such, he is

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[6] We note for the record that the more general issue of P.W.'s fitness to provide care for minor is not before the court.

not, like the father in *In re Isayah C.*, a non-offending custodial parent whose child is subject to removal only upon findings, by clear and convincing evidence, pursuant to section 361, subdivision (c). (Cf. *In re Isayah C., supra,* 118 Cal.App.4th at p. 697 ["[W]here no statutorily defined harm to the minor is proved, the need to establish dependency has not been shown merely because the custodial parent relies on the temporary custodial assistance of suitable third parties"]; *Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662, 672-673 [reversing an order sustaining jurisdictional findings where there was no evidence indicating the child was exposed to a substantial risk of serious physical harm or illness (§ 300(b)) and where the finding that mother could not arrange for her child's care in her absence was based upon "incomplete information" (§ 300(g))].) Accordingly, we reject father's authority as a basis for vacating the court's findings against him.[7]

Father's remaining jurisdictional challenges relate to the findings sustained against mother. In making these challenges, father recognizes that, when " 'a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the [trial] court's finding of jurisdiction over the minor is any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.) This remains true whether jurisdiction exists based on the conduct of just one of the minor's parents. In such a case, the appellate court need not consider jurisdictional findings based on the other parent's conduct. (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 16 [" 'the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent. [Citation.] This accords

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[7] Father contends in his reply brief that the department improperly relies on evidence not produced until after the jurisdictional hearing as grounds to affirm the jurisdictional findings. Assuming for the sake of argument that father is correct in this regard, the result is nonetheless the same. As demonstrated above, the evidence before the court *at the jurisdictional hearing* was sufficient to support the allegations sustained against father in the section 300 petition.

with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent' "]; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.)

Nonetheless, father requests that we exercise our discretion to reach the merits of his challenges to the allegations sustained against mother under section 300, subdivisions (b) and (g). In doing so, he relies upon case law holding that an appellate court may opt to review other jurisdictional findings where one of the following three situations exist: (1) the jurisdictional finding serves as the basis for a dispositional order also challenged on appeal; (2) the findings could be prejudicial to the appellant or could impact the current or any future dependency proceedings; or (3) the finding could have consequences for the appellant beyond jurisdiction. (*In re Drake M., supra,* 211 Cal.App.4th at pp. 762-763.)

Having reviewed this authority, we decline father's request. Assuming for the sake of argument that father has standing to raise challenges regarding allegations sustained against mother, we conclude father has not made an adequate showing that any of the situations described in *In re Drake M., supra,* 211 Cal.App.4th 754, exist to warrant our exercise of discretion to reach the merits of his claims. Specifically, father has not set forth any facts demonstrating that he (as opposed to mother) would be prejudicially impacted by the court's findings against mother in future dependency proceedings, or that any particular finding could have consequences for father (as opposed to mother) beyond jurisdiction.[8] (*In re Drake M., supra,* 211 Cal.App.4th at pp. 762-763.) Accordingly, we affirm the jurisdictional findings sustained against mother.

[8] On the other hand, father does make the argument that one or more of the situations identified in *In re Drake M., supra,* 211 Cal.App.4th 754, exists with respect to each of the allegations sustained as to him. However, because we have already addressed the merits of each of the allegations sustained against him, we need not consider whether his arguments on this issue have merit.

II. Failure to Advise Parents of Their Right to Voluntarily Relinquish Minor.

Father next contends the dispositional order must be reversed because neither the department nor the court advised them of their right to voluntarily relinquish minor to a designated individual or individuals. The following legal principles are relevant.

"A birth parent may relinquish a child to State Adoptions or a licensed adoption agency by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of State Adoptions or the licensed adoption agency. (Fam. Code, § 8700, subd. (a).) To be effective, a certified copy of the relinquishment must be sent to and filed with State Adoptions. (Fam. Code, § 8700, subd. (e)(1).) As noted above, a relinquishment generally becomes final when State Adoptions sends a written acknowledgment of receipt of the relinquishment, or in any event after the lapse of 10 business days after State Adoptions receives the relinquishment for filing." (*In re R.S.* (2009) 179 Cal.App.4th 1137, 1148-1149 [fn. omitted].) "Subdivision (f) of Family Code section 8700 provides that '[t]he relinquishing parent may name in the relinquishment the person or persons with whom he or she intends that placement of the child for adoption be made by the . . . licensed adoption agency.' " (*In re B.C.* (2011) 192 Cal.App.4th 129, 146; see also *In re R.T.* (2015) 232 Cal.App.4th 1284, 1301 ["A parent may voluntarily relinquish a child for adoption and, when doing so, may designate the person with whom the parent intends the child to be placed. (Fam. Code, § 8700, subds. (a) & (f).)"].)

Moreover, "the Legislature [has] . . . required social services agencies to advise parents of this option. The social services agency's report for the disposition hearing must state '[w]hether the parent has been advised of his or her option to participate in adoption planning . . . and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.' [Fn. omitted.] (Welf. & Inst. Code, § 358.1, subd. (g); see Cal. Rules of Court, rule 5.690(a)(1)(B)(iii).) No reunification services need be provided to a parent who voluntarily relinquishes the child for adoption.

(Welf. & Inst. Code, § 361.5, subd. (a).)"[9] (*In re R.T.* (2015) 232 Cal.App.4th 1284, 1303-1304.)

"These measures were enacted to encourage adoption by relatives by offering an alternative to 'the adversarial juvenile court process that requires finding the birth parent unfit' and severing family ties. (Sen. Com. on Judiciary, com. on Assem. Bill No. 1544 (1997–1998 Reg. Sess.) Aug. 26, 1997, p. 4.) 'By offering relatives an alternative to traditional adoption, this bill attempts to move more children out of the foster care system and into permanent homes.' (*Ibid.*) These measures also expedite permanent placement for dependent children by obviating the need for reunification services, a hearing to terminate parental rights, and an appeal from an order terminating parental rights. A child relinquished voluntarily achieves 'the stability of a final adoption without the delay attendant upon the exhaustion of the parents' appeal from an involuntary termination of parental rights.' [Citation.]" (*In re R.T., supra*, 232 Cal.App.4th at p. 1304.)

Most significant for our purposes, the law is clear that: "These rights [of voluntary relinquishment] necessarily continue throughout the dependency proceeding, at least until the juvenile court has ordered the involuntary termination of parental rights, an order that obviously leaves the birth parent with no further rights to relinquish." (*In re R.S., supra*, 179 Cal.App.4th at pp. 1151-1152.) As such, "a voluntary relinquishment results in vacation of a Welfare and Institutions Code section 366.26 hearing and the suspension of further dependency proceedings . . . ." (*In re B.C.* (2011) 192 Cal.App.4th 129, 147, fn. 22.) At the same time, however, the dependency proceedings do not terminate if a parent exercises this right. If the child ultimately is not placed with the individual(s) designated by the parent in the relinquishment, and/or the parent chooses to

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[9] Section 358.1, subdivision (g), provides in relevant part: "Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects: . . . [¶] . . . [¶] (g) Whether the parent has been advised of his or her option to participate in adoption planning, including the option to . . . voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment."

rescind the relinquishment, the juvenile court should then proceed with the section 366.26 hearing. (*Id*. at p. 147, fn. 19.)

In this case, father appears correct that the department failed to discharge its duty under section 358.1, subdivision (g), to provide parents notice of their rights of voluntary relinquishment in the dispositional report or its addendum. However, we fail to see any harm that has resulted because of the department's omission. "We typically apply a harmless-error analysis when a statutory mandate is disobeyed, except in a narrow category of circumstances when we deem the error reversible per se. This practice derives from article VI, section 13 of the California Constitution, which provides: 'No judgment shall be set aside, or new trial granted, in any cause . . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.' " (*In re Jesusa C.* (2004) 32 Cal.4th 588, 624; accord *In re A.D.* (2011) 196 Cal.App.4th 1319, 1325.)

Applying this standard here, we conclude the error in failing to provide proper notice was harmless given that parents may still exercise their rights of voluntary relinquishment. As stated above, a parent's rights of voluntary relinquishment "necessarily continue throughout the dependency proceeding, at least until the juvenile court has ordered the involuntary termination of parental rights, an order that obviously leaves the birth parent with no further rights to relinquish." (*In re R.S.*, *supra*, 179 Cal.App.4th at pp. 1151-1152; see also *In re B.C.*, *supra*, 192 Cal.App.4th at p. 147, fn. 22.) Here, a permanency planning hearing has, according to this record, yet to be scheduled. Thus, because there has been no order terminating parental rights in this case, father's relinquishment rights have not been jeopardized. Accordingly, father's request for reversal of the dispositional order on this basis must fail.

III. The Case Plan Prohibition against Illegal Drug Use.

Finally, father contends that the case plan requirement that he remain "free from illegal drugs and show [the] ability to live free from drug dependency" must be reversed in light of the fact that he has a valid medical marijuana use permit. He reasons that

"marijuana remains is [sic] an 'illegal drug' in this state, the Compassionate Use Act, Health and Safety Code Section 11362.5, having merely decriminalized certain possession and cultivation of medicinal marijuana under specified circumstances." We reject his argument.

First, father acknowledges no objection was raised to this case plan requirement at the appropriate time before the juvenile court. Accordingly, he has forfeited the right to raise it for the first time here. (See *In re Christopher B.* (1996) 43 Cal.App.4th 551, 558 ["[i]n dependency litigation, nonjurisdictional issues must be the subject of objection or appropriate motions in the juvenile court; otherwise those arguments have been waived and may not be raised for the first time on appeal"].)

Further, even if we were to reach the merits of this issue, we would find no problem with the case plan adopted by the court. The stated purpose of the Compassionate Use Act (the Act) is, inter alia, "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana" and "[t]o ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are *not subject to criminal prosecution or sanction*." (Health & Saf. Code, § 11362.5, subds. (b)(1) (A), (B) [italics added].) In addition, the Act provides that "[n]othing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, *nor to condone the diversion of marijuana for nonmedical purposes*." (*Id.*, § 11362.5, subd. (b)(2) [italics added].) And, finally, "Section 11357 [of the Health and Safety Code], relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient . . . who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." (*Id.*, § 11362.5, subd. (d).)

As this referenced language makes clear, no court may sanction and, more specifically, no court may find a violation of section 11357, criminalizing possession of

marijuana, in the case of a person, like father, validly licensed under the Act to use marijuana for medical purposes. Or, in other words, use of marijuana for medicinal purposes by individuals, like father, whose use has been "deemed appropriate and has been recommended by a physician" is not against the law.

Given these provisions of California law, and in light of the presumption that the juvenile court is aware of and follows California law, we reject father's argument that he is barred under the case plan from using in an otherwise authorized manner medicinal-use marijuana. Simply put, father's authorized use of medical marijuana would not qualify as an "illegal drug" within the meaning of the case plan.

Accordingly, there are no grounds to vacate the challenged case plan requirement. As long as father's use of marijuana for medicinal purposes comports with the requirements of the Act, he cannot be found in violation of the case plan or otherwise sanctioned by any court, including the juvenile court. (See *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549 [to rely on the Act as a defense to an alleged violation of Health and Safety Code, section 11357, the quantity of marijuana possessed, and the form and manner in which it was possessed, must be reasonably related to the defendant's current medical needs].)

DISPOSITION

The challenged orders and findings of the juvenile court are affirmed.

_____
Jenkins, J.

We concur:

_____
McGuiness, P. J.

_____
Pollak, J.